

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Supratim Bhattacharya

F.A.T 22 of 2026
IA No: CAN 1 of 2026

Danish Karim
Vs.
Ranjana Chowdhury

For the appellants	:	Mr. Md. Abdur Rakib
For the respondent	:	Mr. Dhananjay Banerjee Mr. Mohinul Islam
Heard on	:	20.07.2026
Judgment on	:	20.07.2026

Sabyasachi Bhattacharyya, J.:-

1. On the prayer of learned counsel for the appellant, leave is granted to the learned Advocate-on-record for the appellant to carry out the necessary corrections to the Memorandum of Appeal to cure the defects pointed out by the Stamp Reporter in the course of this week.

- 2.** Learned counsel for the appellant submits that the learned Trial Judge dismissed the application filed by the parties jointly for divorce by mutual consent under Section 28 of the Special Marriage Act, 1954 only on the ground that the parties had not appeared before the mediator to settle their disputes as per previous direction of the court.
- 3.** Learned counsel submits that mediation depends on the consent of both parties and in the present case, since the parties, in any event, have already applied for divorce by mutual consent, their non-appearance for mediation could not have vitiated the application itself.
- 4.** Learned counsel for the respondent, who was a co-applicant in the application for mutual consent divorce, adopts the arguments of the appellant and also submits that the impugned judgment should be set aside on such count.
- 5.** From the impugned judgment, we find that the learned Trial Judge observed that vide order dated August 12, 2025, the parties were directed to appear before the mediator to settle the dispute between themselves.

6. It was further recorded that the matter was fixed on several other dates, on which dates learned counsel “did not think it their duty to intimate that they did not go for mediation”.
7. The learned Trial Judge further observed that when the matter was taken up, submission was made that the order dated August 12, 2025, directing the parties to go for mediation, was not complied with by the parties, which was construed to be a deliberate violation of the order of the court and the learned Trial Judge went so far as to observe that the conduct of the parties and their counsel was “not at all praiseworthy”.
8. Not stopping there, the learned Trial Judge held that he was not inclined to show any “soft attitude” towards the petitioner and accordingly dismissed the matrimonial suit itself, which arose out of the Section 28 application, for non-compliance of the specific direction of the court.
9. Such attitude of the learned Trial Judge is strongly deprecated, being completely *de hors* the law.
10. The provision under which a court, in a suit of a civil nature, can send parties to mediation is Section 89 of the Code of Civil Procedure, the trappings of which are applicable to a matrimonial suit as well.

- 11.** Under the said provision, if there are elements of settlement involved in the dispute raised in a suit, subject to the agreement of the parties (and only subject to such agreement), the court can send the matter for alternative dispute resolution, either by arbitration, conciliation, mediation or judicial settlement, including Lok Adalat or otherwise.
- 12.** However, the consent of both parties to go for mediation is a *sine qua non* for referring the matter to mediation and the parties cannot be forced against their Will to go to mediation.
- 13.** The Court, in a matrimonial matter, must also explore the avenue of reconciliation between the parties in a regular matrimonial suit, but in an application for divorce by mutual consent, there is little or no scope for adjudicating the disputes between the parties on merits. If the parties do not agree, there is no scope of reconciliation or mediation at all and a mandatory recourse to mediation cannot be forcibly thrust upon them by the court.
- 14.** The learned Trial Judge proceeded on a palpable misconception of law that it was the mandatory duty of the parties to go to mediation and since the parties did not comply with the direction to go to mediation, which was forcibly thrust upon

them by the court, the application for mutual consent divorce was itself liable to be dismissed.

- 15.** Such conception of the law is absolutely perverse and contrary to basic legal tenets.
- 16.** In such view of the matter, as the ambit of the appeal is brief, we take up the appeal itself along with the application for disposal, with the consent of the parties.
- 17.** FAT 22 of 2026 is allowed on consent, in the light of the above observations, thereby setting aside Order No.5 dated January 15, 2026 and the decree of even date, passed by the learned Additional District Judge, First court at Sealdah, District-South 24 Parganas in Matrimonial Suit No.344 of 2025, and remanding the application under Section 28 of the Special Marriage Act, 1954 filed by the parties to the said learned court for disposal in accordance with law, within the timeline as stipulated in the concerned statute, that is, the 1954 Act.
- 18.** The trial court as well as the parties and all concerned shall act on the server copy of this judgment, without insisting upon prior production of certified copy thereof, for the purpose of compliance.
- 19.** CAN 1 of 2026 is consequentially disposed of as well.

20. There will be no order as to costs.

21. Urgent certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)

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